

LYMAN C. WELCH'S COMMENTS ON
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Nancy Crowe
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Department of Commerce
14th Street and Pennsylvania Avenue, N.W.
Room 2705
Washington, D.C. 20230

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RE: Proposed Commerce Department Regulations

Dear Ms. Crowe:

The Commerce Department regulations regarding export of encryption products are a step backward from the prior State Department regulations. Requiring companies to adopt "key-recovery" systems is an anti-free-market approach that will hurt the global competitiveness of U.S. companies with no real security advantage. In addition, the proposed regulations are vague, overbroad and violate the First Amendment.

I. The Proposed "Key-Recovery" Approach is Contrary to Free Market Principles and will Hurt American Companies

American private industry needs to have strong encryption available now, without outdated munitions restrictions and without forcing industry to turn the keys to its confidential information over to government. Changing the Commerce Department's position on encryption towards a free-market approach would allow U.S. industry to regain the competitive advantages in the field that they once had and promote open market principles advocated by the Administration in other areas.

Requiring industry to incorporate key-recovery into its products is anticompetitive since it adds to the total cost of a product and will increase development time. In addition, parties who represent a security threat will not use systems

incorporating key-recovery mechanisms for their communications. Terrorists and criminals will simply use strong encryption systems widely available which do not have key-recovery incorporated.


II. The Proposed Regulations Are Vague, Overbroad and Violate the First Amendment

The proposed regulations do not clearly define what is restricted and what is not. There should be no distinction between distributing the source code of an encryption algorithm and distributing the identical code in computer form on a computer disk. The First Amendment free speech and press guarantees apply to speech in electronic form equally as print form. By restricting export and distribution of encryption code in computer form, the proposed regulations violate the First Amendment.

These new regulations simply continue in effect the flawed prior policies of the State Department which are based on an outdated concept of "munitions" which should not be applied to software products in the information age.

Thank you for the opportunity to comment on the proposed regulations.

Sincerely,


Lyman C. Welch